

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PETER JASON HELFRICH,

Case No. 2:23-cv-00570-RFB-NJK

Petitioner,

ORDER

V.

BRIAN WILLIAMS, et al.,

Respondents.

8 *Pro se* Petitioner Peter Jason Helfrich has filed a Petition for Writ of Habeas Corpus under
9 28 U.S.C. § 2254, motion for appointment of counsel, and motion for leave to proceed in forma
10 pauperis (“IFP”). (ECF Nos. 1, 1-2, 1-3, 1-4.) This Court grants the motion for leave to proceed
11 IFP and conducts an initial review of the petition under the Rules Governing Section 2254 Cases
12 (“Habeas Rules”). For the reasons discussed below, the Court orders Helfrich to show cause why
13 his petition should not be dismissed as untimely and/or unexhausted.

I. BACKGROUND¹

15 Helfrich challenges a conviction and sentence imposed by the Fifth Judicial District Court
16 for Nye County (“state court”) in State v. Peter J. Helfrich, CR20-0145A. (ECF No. 1-3 at 38.) On
17 July 28, 2021, the state court entered a judgment of conviction, pursuant to a no contest plea, of
18 battery with the use of a deadly weapon. (*Id.*) Helfrich was sentenced to 24 to 72 months in prison.
19 (*Id.*) A search of the Nevada state appellate courts’ docket reflects that Helfrich did not seek
20 appellate review of his judgment of conviction. On September 10, 2021, Helfrich filed a 1-page
21 “affidavit of indigent petition for writ of habeas corpus seeking an order to correct & amend factual

¹ The Court takes judicial notice of the online docket records of the Nevada appellate courts. These docket records may be accessed at <http://caseinfo.nvsupremecourt.us/public/caseSearch.do>.

1 errors contained in PSI report” in his criminal case. (*Id.* at 25.) Because the state court did not take
2 any action on Helfrich’s petition, perhaps because it was styled as an affidavit, Helfrich petitioned
3 the Nevada Supreme Court “for a writ of mandamus asking [the Nevada Supreme Court] to compel
4 the district court to rule on [his] pending petition for a writ of habeas corpus” in case number
5 85505. The Nevada Supreme Court ordered a response and reply to the petition. Respondents filed
6 a response on February 6, 2023, but it does not appear that Helfrich has filed a reply or that the
7 Nevada Supreme Court has issued an order on Helfrich’s writ of mandamus. In any event, it does
8 not appear that Helfrich’s petition for writ of habeas corpus has been decided by the state court.
9 And even if the state court has recently decided Helfrich’s petition, Helfrich has yet to seek
10 appellate review of the denial.

11 II. DISCUSSION

12 Habeas Rule 4 requires the assigned judge to examine the habeas petition and order a
13 response unless it “plainly appears” that the petition is not entitled to relief. See Valdez v.
14 Montgomery, 918 F.3d 687, 693 (9th Cir. 2019). This rule allows courts to screen and dismiss
15 petitions that are patently frivolous, vague, conclusory, palpably incredible, false, or plagued by
16 procedural defects. Boyd v. Thompson, 147 F.3d 1124, 1128 (9th Cir. 1998); Hendricks v.
17 Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (collecting cases). Helfrich’s petition appears to
18 potentially be plagued with numerous defects.

19 A. Timeliness

20 The Antiterrorism and Effective Death Penalty Act (“AEDPA”) establishes a one-year
21 period of limitations for state prisoners to file a federal habeas petition pursuant to 28 U.S.C. §
22 2254. The one-year limitation period, i.e., 365 days, begins to run from the latest of four possible
23 triggering dates, with the most common being the date on which the petitioner’s judgment of

1 conviction became final by either the conclusion of direct appellate review or the expiration of the
2 time for seeking such review. 28 U.S.C. § 2244(d)(1)(A). The federal limitations period is tolled
3 while “a properly filed application for State post-conviction or other collateral review with respect
4 to the pertinent judgment or claim is pending.” 28 U.S.C. § 2244(d)(2).

5 Helfrich’s conviction became final on the date in which the time for seeking direct review
6 expired: August 27, 2021. See Nev. R. App. P. 4(b)(1) (requiring a notice of appeal to “be filed
7 with the district court clerk within 30 days after the entry of the judgment or order being
8 appealed”); Gonzalez v. Thaler, 565 U.S. 134, 137 (2012) (when a state prisoner “does not seek
9 review in a State’s highest court, the judgment becomes ‘final’ on the date that the time for seeking
10 such review expires”). The federal statute of limitations thus began to run the following day:
11 August 28, 2021. Accordingly, the limitations period expired 365 days later on August 29, 2022.
12 Even though Helfrich filed a 1-page “affidavit of indigent petition for writ of habeas corpus
13 seeking an order to correct & amend factual errors contained in PSI report” on September 10, 2021
14 (see ECF No. 1-3 at 37), it would only toll the federal limitations period if it was “properly filed.”
15 See Artuz v. Bennett, 531 U.S. 4, 8 (2000) (“[A]n application is ‘properly filed’ when its delivery
16 and acceptance are in compliance with the applicable laws and rules governing filings. These
17 usually prescribe, for example, the form of the document, the time limits upon its delivery, the
18 court and office in which it must be lodged, and the requisite filing fee.”). It does not appear that
19 Helfrich’s state petition was properly filed because (1) it was not on a court-approved form and is
20 not in substantial compliance with the form as required by Nev. Rev. Stat. § 34.735, (2) it is not
21 titled “Petition for Writ of Habeas Corpus (Postconviction)” as required by Nev. Rev. Stat. §
22 34.730(2), (3) it does not name the proper respondents pursuant to Nev. Rev. Stat. § 34.730(2),
23 instead naming “State of Nevada Corporate Fictional Entity,” and (4) it does not appear to have

1 been served upon the Attorney General or the Nye County District Attorney as required by Nev.
 2 Rev. Stat. § 34.730(2). (See ECF No. 1-3 at 37.) If Helfrich's state petition for a writ of habeas
 3 corpus was not properly filed, the statute of limitations for his federal petition expired on or about
 4 August 29, 2022, and the instant petition, filed on April 14, 2023, is untimely on its face.

5 In this regard, Helfrich is informed that the one-year limitation period may be equitably
 6 tolled. Equitable tolling is appropriate only if the petitioner can show that: (1) he has been pursuing
 7 his right diligently, and (2) some extraordinary circumstance stood in his way and prevented timely
 8 filing. Holland v. Florida, 560 U.S. 631, 649 (2010). “[E]quitable tolling is unavailable in most
 9 cases.” Miles v. Prunty, 187 F.3d 1104, 1107 (9th Cir. 1999). And ““the threshold necessary to
 10 trigger equitable tolling [under AEDPA] is very high, lest the exceptions swallow the rule.””
 11 Miranda v. Castro, 292 F.3d 1063, 1066 (9th Cir. 2002) (quoting United States v. Marcello, 212
 12 F.3d 1005, 1010 (7th Cir. 2000)). Helfrich ultimately has the burden of proof on this “extraordinary
 13 exclusion.” Miranda, 292 F.3d at 1065. He must demonstrate a causal relationship between the
 14 extraordinary circumstance and the lateness of his filing. E.g., Spitsyn v. Moore, 345 F.3d 796,
 15 799 (9th Cir. 2003); accord Bryant v. Ariz. Att'y Gen., 499 F.3d 1056, 1061 (9th Cir. 2007).

16 Helfrich further is informed that, under certain circumstances, the one-year limitation
 17 period may begin running on a later date or may be statutorily tolled. See 28 U.S.C. §
 18 2244(d)(1)(B), (C), (D) & (d)(2). And Helfrich is informed that if he seeks to avoid application of
 19 the limitation period based upon a claim of actual innocence, i.e., tending to establish that no
 20 reliable evidence tending to establish actual factual innocence, i.e., tending to establish that no
 21 juror acting reasonably would have found him guilty beyond a reasonable doubt. See McQuiggin
 22 v. Perkins, 569 U.S. 383 (2013); House v. Bell, 547 U.S. 518 (2006); Lee v. Lampert, 653 F.3d
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1 929 (9th Cir. 2011). In this regard, “actual innocence” means factual innocence, not mere legal
 2 insufficiency.” Bousley v. United States, 523 U.S. 614, 623 (1998).

3 **B. Exhaustion**

4 A claim remains unexhausted until the petitioner has given the highest available state court
 5 the opportunity to consider the claim through direct appeal or state collateral-review proceedings.
 6 O’Sullivan v. Boerckel, 526 U.S. 838, 844–45 (1999); Peterson v. Lampert, 319 F.3d 1153, 1158
 7 (9th Cir. 2003) (en banc). To properly exhaust state remedies on each claim, the habeas petitioner
 8 must “present the state courts with the same claim he urges upon the federal court.” Picard v.
 9 Connor, 404 U.S. 270, 276 (1971). The federal constitutional implications of a claim, not just
 10 issues of state law, must have been raised in the state court to achieve exhaustion. Woods v.
 11 Sinclair, 764 F.3d 1109, 1129 (9th Cir. 2014); Castillo v. McFadden, 399 F.3d 993, 999 (9th Cir.
 12 2005) (fair presentation requires both the operative facts and federal legal theory upon which a
 13 claim is based). A claim is not exhausted unless the petitioner has presented to the state court the
 14 same operative facts and legal theory upon which his federal claim is based. Bland v. California
 15 Dep’t of Corrections, 20 F.3d 1469, 1473 (9th Cir. 1994).

16 Helfrich has not alleged or demonstrated that he has fully exhausted his state court
 17 remedies. See, e.g., Arevalo v. Hennessy, 882 F.3d 763, 764–67 (9th Cir. 2018) (finding that a
 18 California petitioner properly exhausted his state remedies by filing two motions in the trial court,
 19 a habeas petition in the court of appeal, and a habeas petition in the state supreme court, each of
 20 which was denied); see also Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 489–
 21 92 (1973) (holding that pretrial detainee in state custody must exhaust available state court
 22 remedies for federal court to consider detainee’s constitutional claims). Indeed, Helfrich’s petition
 23 for writ of mandamus to the Nevada Supreme Court, asking for the Nevada Supreme Court to

1 order the state court to rule on his “affidavit of indigent petition for writ of habeas corpus seeking
 2 an order to correct & amend factual errors contained in PSI report,” has not been decided. As such,
 3 lacking a ruling from the Nevada Supreme Court on the petition for writ of mandamus, the state
 4 court has not considered Helfrich’s ineffective assistance of counsel claims. As a matter of simple
 5 comity, this Court is not inclined to intervene prior to giving the Nevada state court and appellate
 6 courts an opportunity to redress any violation of Helfrich’s constitutional rights.² See Coleman v.
 7 Thompson, 501 U.S. 722, 731 (1991) (explaining that the exhaustion requirement is “grounded in
 8 principles of comity; in a federal system, the States should have the first opportunity to address
 9 and correct alleged violations of state prisoner’s federal rights”).

10 **III. VARIOUS OTHER MOTIONS**

11 Helfrich has also filed an affidavit of motion for leave to supplement exhibit 9 (ECF No.
 12 3), affidavit of motion for speedy trial (ECF No. 4), ex parte affidavit for appointment of counsel
 13 (ECF No. 5), affidavit of motion to stay (ECF No. 6), affidavit of motion for leave to supplement
 14 exhibit 10 (ECF No. 7), motion for leave to file document (ECF No. 8), motion for judicial notice
 15 of affidavit (ECF No. 9), affidavit of indigent petition (ECF No. 11), affidavit of indigent petition
 16 for an extraordinary writ (ECF No. 12), affidavit of judicial notice (ECF No. 13), affidavit of
 17 motion for preliminary injunction (ECF No. 14), affidavit of motion for temporary restraining
 18 order (ECF No. 15), affidavit of emergency motion for preliminary injunction (ECF No. 16),
 19 affidavit of emergency motion for temporary restraining order (ECF No. 17), motion for
 20 preliminary injunction (ECF No. 18), motion for temporary restraining order (ECF No. 19), motion

22 ² In his instant petition, Helfrich alleges, inter alia, that his trial counsel failed to correct factual
 23 errors in the PSI, had a conflict of interest, forced him to take a plea, did not invoke his right to a
 speedy trial, failed to investigate and interview witnesses, and failed to seek funds for a psychiatric
 evaluation. (ECF No. 1-3.)

1 for all transcripts (ECF No. 23), affidavit of motion for preliminary injunction (ECF No. 24),
2 affidavit of motion for temporary restraining order (ECF No. 25), motion for production of
3 grievance records (ECF No. 26), affidavit of motion for preliminary injunction (ECF No. 28),
4 affidavit of motion for temporary restraining order (ECF No. 29), motion to recuse Nevada
5 Supreme Court (ECF No. 32), motion for preliminary injunction (ECF No. 33), motion for
6 temporary restraining order (ECF No. 34), and motion for recusal of David R. Gamble (ECF No.
7 35). In light of this Court's order to show cause, these motions are denied without prejudice.
8 Helfrich may renew these motions later as applicable. However, notably, many of the issues raised
9 in these motions do not appear to be properly brought in a 28 U.S.C. § 2254 action for a writ of
10 habeas corpus; rather, some of the issues—like not being provided adequate outdoor exercise time
11 or brass slips by the law librarian—appear to be issues that lie in a civil-rights action under 42
12 U.S.C. § 1983.

13 IV. CONCLUSION

14 IT IS THEREFORE ORDERED that Petitioner Peter Jason Helfrich's motion for leave to
15 proceed in forma pauperis (ECF No. 1) is granted.

16 IT IS FURTHER ORDERED that Helfrich show cause within 45 days of the date of this
17 order why this action should not be dismissed as untimely and/or wholly unexhausted. If Helfrich
18 does not timely respond to this order, the petition will be dismissed without further advance notice.
19 If Helfrich responds but fails to show with specific, detailed, and competent evidence why the
20 petition should not be dismissed, the action will be dismissed.

21 IT IS FURTHER ORDERED that all assertions of fact made by Helfrich in response to
22 this show cause order must be detailed, must be specific as to time and place, and must be
23 supported by competent evidence. The Court will not consider any assertions of fact that are not

1 specific as to time and place, that are not made pursuant to a declaration under penalty of perjury
2 based upon personal knowledge, and/or that are not supported by competent evidence filed by
3 Helfrich in the federal record. Helfrich must attach copies of all materials upon which he bases his
4 argument that the petition should not be dismissed. Unsupported assertions of fact will be
5 disregarded.

6 IT IS FURTHER ORDERED that Helfrich's motion for appointment of counsel (ECF No.
7 1-2) is deferred until Helfrich complies with this order.

8 IT IS FURTHER ORDERED that Helfrich's other pending motions (ECF Nos. 3, 4, 5, 6,
9 7, 8, 9, 14, 15, 16, 17, 18, 19, 23, 24, 25, 26, 28, 29, 32, 33, 34, 35) are denied without prejudice.

10 DATED THIS 20th day of June 2023.



11 RICHARD F. BOULWARE, II
12 UNITED STATES DISTRICT COURT
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